

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4172 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VINOD KANAIYALAL NEBHANI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/12/1999

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of the PASA by virtue of an order passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on March 13, 1999 in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short]. The grounds of detention indicate that the detaining authority took into consideration a

case being Cr.R. No. 5003/99 registered against the petitioner under Bombay Prohibition Act. The authority also took into consideration the statements of two anonymous witnesses and recorded a subjective satisfaction for exercising powers u/s 9[2] of the PASA Act. The authority after considering the possibility of resorting to less drastic remedy, came to a conclusion that the detention under the PASA is the only remedy which can be resorted to for preventing the petitioner from pursuing his illegal and anti social activities detrimental to the public order.

2. The petitioner has approached this Court with this petition under Article 226 of the Constitution of India assailing the order of detention on various grounds. The main ground being that the statements of witnesses were verified on 13th March 1999 by the detaining authority and the order came to be passed on that very day and therefore, the detaining authority had no time to verify the genuineness of fear expressed by the witnesses qua the petitioner. The order is therefore bad.

3. Ms. Kachhawah, learned advocate appearing for the petitioner has pressed into service the above ground only and submitted that the petition may be allowed.

4. Mr. H.H.Patel, learned AGP for the respondents has opposed this petition. He placed reliance on para 6 of the affidavit in reply to explain how the subjective satisfaction was arrived at by the detaining authority for exercise of powers u/s 9[2] of the PASA Act.

5. Considering the rival side contentions, the question that is required to be considered by this Court is whether the detaining authority could have reasonable arrived at a genuine subjective satisfaction for exercise of powers u/s 9[2] of the PASA Act.

6. In this regard, what is required to be considered is that the statements of the witnesses were recorded by the authority on 12th March 1999 and 13th March 1999 by police inspector, PCB Branch, Ahmedabad city. The statements have been verified on 13th March 1999 itself. This means that the sponsoring authority recorded the statements of one of the witnesses on 13th March 1999 itself, the proposal for detention was prepared and received by the detaining authority on 13th March 1999 itself, the detaining authority went through the papers on 13th March 1999, called the witnesses and verified the statements on 13th March 1999 and after giving a

thoughtful consideration to this aspects, passed the order on 13th March 1999 itself. The affidavit if perused does not explain as to how and in what sequence and at what point of time, all these activities were carried out by the detaining authority on 13th March 1999 itself. All that is stated that after perusing and being subjectively satisfied, the orders are passed.

7. In this view of the matter, this Court while placing reliance on the decision of this Court in the case of Kalidas Chandubhai Kahar v/s State of Gujarat as reported in 1993 [2] GLR 1659, feels that the order of detention stands vitiated on the ground that the detaining authority's subjective satisfaction for need for exercise of powers u/s 9[2] of the PASA Act is not genuine. This would infringe the right of detenu of making an effective representation and vitiate the detention.

8. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad on 13th of March 1999 in respect of the petitioner Vinod Kanaiyalal Nebhani, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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